



BELLSOUTH'S EMERGENCY
REQUEST FOR DECLARATORY
RULING SHOULD BE DENIED

WC Docket No. 03-251

March 24, 2004

Overview

- BellSouth's refusal to continue providing DSL to customers who elect local service from a CLEC is anti-competitive.
- The FCC should allow the state decisions to stand as a legal and public policy matter.
- States have ample authority to outlaw this back-door attack on UNE-P voice service.
- BellSouth's claims of harm are unsubstantiated or insubstantial.

BellSouth's Tying Practice is Anti-Competitive and Unlawful

- BellSouth prohibits its DSL customers from subscribing to CLEC-provided voice service.
 - Switching to another DSL provider presents hassles and disruptions for the customer. To avoid the hassle, consumers are forced to stay with BS or lose their existing DSL service and email addresses.
 - Some consumers have no alternative to BellSouth DSL.
- Thousands of BST DSL customers have been denied the opportunity to switch to MCI or other CLECs.
- Small business customers reluctant to switch voice providers due to disruptions in email and internet access.
- With approximately 7.3 million DSL lines in SBC, VZ, and BST regions (*see* 4Q03 earnings reports), 7.3 million customers would be denied choice of voice provider if FCC grants petition.

BellSouth's Tying Practice is Anti-Competitive and Unlawful

- Six State PUCs in the BST region filed comments urging the FCC to reject BST's petition. The States have concluded, e.g.,:
 - BellSouth uses the tying arrangement to “insulate its voice service from competition because customers that would like to switch to a preferred CLEC for voice service have a disincentive to do so.” GA PSC.
 - BST's practice locks in voice customers so effectively that “it is difficult for a CLEC to entice a customer away from BellSouth once that customer has Fast Access.” FL PSC Staff Recommendation.
 - BST's practice of “tying its DSL service to its own voice service to increase its already considerable market power in the voice market has a chilling effect on competition and limits the prerogative of Kentucky customers to choose their own telecommunications carriers.” KY PSC.

BellSouth's Tying Practice is Anti-Competitive and Unlawful

- There is no legitimate basis for BST's practice.
 - This is an anti-competitive effort to preserve BST's voice monopoly by making it impossible to use DSL with CLEC-provided UNE-P voice.
 - BST's willingness to provide DSL to CLECs that resell BST voice shows that BST's practice is targeted at the voice market – it is about impeding UNE-P, the most widely used method of providing local voice competition (“Any CLEC that wants to resell BellSouth's voice service to a customer can provide that service on the same line used by BellSouth to provide Fast Access.” BellSouth Reply Comments, WC Docket No. 03-251, at p. 37, n.31).

States Have Jurisdiction

- This issue involves regulation of local voice service, not DSL. The State Orders are clear on this point.
- The States are not regulating the rates of BST's DSL – rather, they are trying to “open the way for competition in the local service market and provide choices for consumers.” – AL PSC.
- Secs. 251-252 gives states clear and exclusive authority over local telephony and conditions limiting local voice competition.

The States' Orders Do Not Violate the TRO

- The TRO did not speak to the issue at hand. The TRO declined to require ILECs to separately unbundle the low-frequency portion of the loop, which is not the issue here.
- The States' Orders only require BST to not restrict its DSL offering on loops entirely bought and paid for by the CLEC.

The States' Orders Do Not Violate Any Other FCC Rule or Policy

- Sec. 271 Orders conclude only that FCC currently has no rule on this issue.
- The Line Sharing Order does not address BST's practices at issue here.

The States' Orders Will Not Deter Broadband Investment

- There is no basis for BST's claim that allowing CLEC voice customers to subscribe to ILEC DSL will deter investment in broadband:
 - BST has 1.5 million DSL customers. DSL lead BST's 4.0% increase in data revenues in 4Q03 compared to 4Q02. *See* 4Q04 Earnings Report.
 - On 1/8/04, VZ announced commitment to invest \$3 billion over next 2 years to bring broadband to mass market.
 - Qwest is offering stand-alone DSL.
- To the contrary, BST's practice will suppress broadband demand and so deter broadband investment.

BellSouth's Claims of Harm Are Frivolous

- The states have rejected BST's claims regarding "technological limitations."
- Indeed, technological or other limitations have not stopped Qwest from offering stand-alone DSL.
- UNE-P CLEC customers had been able to receive BST DSL before BST put a stop to it.
- BST changed its systems so that BST could provide DSL only to BST voice customers. Any time/expense required to comply with State Orders is a problem of BST's own making.

BellSouth's Claims of Financial Harm Are Unsupported

- BST's claims about the costs of complying with State Orders are unsupported. BST will enjoy economies of scale across its region as it makes system changes in each state. Many changes have already been made.
- BST's claim that it will cost \$1500 for every CLEC voice customer who maintains BST DSL is unsupported.
- BST complains about "financial burdens" yet is willing to forego DSL income from CLEC voice customers to preserve its monopoly in the voice market.